

EXHIBIT 4

Videotape
Deposition of Michael G. Malicki, 4/7/2005

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 CYCLE-CRAFT CO., INC., d/b/a
4 BOSTON HARLEY-DAVIDSON/BUELL,

5 Plaintiff,

6 vs. Civil Action No. 04 11402 NMG

7 HARLEY-DAVIDSON MOTOR COMPANY, INC.
8 and BUELL DISTRIBUTION COMPANY, LLC,

9 Defendants.

10
11
12 Video Deposition of MICHAEL G. MALICKI

13 Thursday, April 7th, 2005

14
15 10:48 a.m.

16 at

17 GRAMANN REPORTING, LTD.
18 710 North Plankinton Avenue, Suite 710
19 Milwaukee, Wisconsin

20
21 Reported by Sarah A. Reinicke, RPR/RMR/CRR
22 Roseanne E. Pezze, RPR/CRR
23
24
25

Videotape
Deposition of Michael G. Malicki, 4/7/2005

1 further investigation once the two of you returned to
2 Milwaukee?

3 A Yes.

4 Q And in this conversation was he, to your knowledge,
5 reporting to you the conclusions he had reached after
6 that further investigation?

7 A Yes.

8 Q Did you have conversations with anyone else at
9 Harley-Davidson Motor Company between the time of the
10 audit and the time of the meeting in which
11 Mr. Verduyn reported his results?

12 A Not that I recall.

13 Q The meeting that was held at which Mr. Verduyn
14 reported the results of his audit, do you recall who
15 attended that meeting?

16 A Yes.

17 Q Who?

18 A John Flickinger, Gene Ostrom, Steve Verduyn,
19 Ms. Jenny Kent, and myself.

20 Q And do you recall if there was discussion at that
21 meeting of what sanction to impose upon Boston
22 Harley-Davidson?

23 MR. BERKOWITZ: At this point I'm going to
24 give you the same caution and instruction that I've
25 given other witnesses who attended this meeting,

Videotape
Deposition of Michael G. Malicki, 4/7/2005

1 which is not to disclose any communication with Jenny
2 Kent or any communication by Ms. Kent or any
3 communication with her relating in any way to any
4 request for legal advice. Apart from that
5 instruction, you can testify in response to
6 Mr. Rehnquist's questions. Do you understand?

7 THE WITNESS: I understand, and
8 Mr. Rehnquist, could you please repeat the question.

9 BY MR. REHNQUIST:

10 Q Yeah. Was there discussion at this meeting about
11 what sanction to impose upon Boston Harley-Davidson?

12 A Yes.

13 Q And did counsel participate in that discussion to the
14 best of your memory?

15 MR. BERKOWITZ: You can answer that yes or
16 no.

17 THE WITNESS: Yes.

18 MR. REHNQUIST: Mr. Berkowitz, if I ask any
19 further questions about the content of that
20 discussion, are you going to instruct the witness not
21 to answer?

22 MR. BERKOWITZ: I will.

23 BY MR. REHNQUIST:

24 Q Mr. Malicki, this is Exhibit 24. I'll show you 25 at
25 the same time. Exhibit 24 and 25 are two letters

Videotape
Deposition of Michael G. Malicki, 4/7/2005

1 BY MR. REHNQUIST:

2 Q To whom did you give input?

3 A My yes answer was to the compilation of being part of
4 the audit and having to do with this, you know,
5 being, you know, working on the audit with Steve.

6 Q Apart from working on the audit with Steve, did you
7 review or comment on any prior draft of these two
8 letters?

9 MR. BERKOWITZ: Just before you answer, let
10 the record reflect that in the witness's last answer
11 he was referring to Exhibit 24. You can answer the
12 question.

13 THE WITNESS: No.

14 BY MR. REHNQUIST:

15 Q Do you recall having any discussions with anyone at
16 Harley-Davidson Motor Company about what sanction, if
17 any, to impose upon Boston Harley-Davidson between
18 the time you returned from the audit and April 20
19 excluding any such conversations with counsel?

20 MR. BERKOWITZ: May I have the question
21 back, please?

22 (Question read.)

23 MR. BERKOWITZ: Thank you.

24 THE WITNESS: I have no recollection of
25 having any conversation on the sanction.